

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **January 22, 2008**

Time: **9am**

Place: Backman Title
167 E. 6100 S., Ste 250

Members

(Attendees = x)

Commission Members

Chair, Glen W. Roberts, <i>Utah Cnty</i>	xDavid M. Lattin, <i>Salt Lake Cnty</i>
xCanyon W. Anderson, <i>Davis Cnty</i>	xGarry M. Goodsell, <i>Iron Cnty</i>
xJerry M. Houghton, <i>Tooele Cnty</i>	

Department Staff

xJohn E. "Mickey" Braun, Jr. <i>Ass't Commissioner</i>	xPerri Babalis <i>AG Legal Counsel</i>	Darrel Powell <i>Dir. Market Conduct</i>	Mark Kleinfeld <i>Admin. Law Judge</i>
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xGerri Jones <i>MC Examiner</i>	xSheila Curtis <i>MC Examiner</i>	xJilene Whitby <i>PIO/Recorder</i>
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Public

David Moore	Al Newman	Rod Newman	Jeff Weiner	Len Maybe
Scott Sabey	Doug Curlis	Sandy Halladay	Clayton Hansen	

MINUTES

I. Welcome and Introductions / David Lattin

At Glen's absence due to illness, David was asked by the members of the Commission to chair the meeting because of his seniority.

II. Adoption of Minutes of Previous Meeting

Canyon made the **motion** to approve the minutes, Jerry seconded it and the vote was unanimous.

III. Review & Concur with Licensee Report

No licensing report was available. **December and January's report will be made available at the February meeting.**

IV. Number of Cases Open & Closed

- **Status of New Consumer Service Complaint Report / Mickey**

The report showed six open and two closed complaints. They do not relate to the investigations report.

- **Investigations / Mickey**

Each listing on the violation list is one violation. Canyon asked if the Commission could help with the 28 open cases. Mickey said the majority of the work is investigative, which the Commission does not have the authority to do. Jerry made a **motion** to accept the reports, Canyon seconded it and the vote was unanimous.

V. Review & Concur with Enforcement Case Report

Mark was not in attendance since he had no cases to report on.

- **Report on Profit Made in Case Reviewed During December's Meeting and Possibly Rework Stipulation Order / Mickey**

- o The department has a matrix of minimum and maximum penalties for violations. It also includes information about mitigating circumstances. Most violations go through a stipulation process that includes obtaining the Commission's approval. Profit from a violation is difficult to determine and takes a lot of time. If sales are below the profit

margin then it is hard to determine if a profit was made. The department considers the profit made in a violation before recommending a penalty.

- o Jerry suggested using the words "gross income" rather than "profit" in the code.
- o Canyon suggested defining "profit" by rule. **Put on February's agenda.** Mickey said it would be easier to regulate if it was defined in terms of premium.
- o Commission members expressed concern with what happens when discussion of a case goes beyond the information Mark provides. Perri said they could not look beyond this point unless they hear the cases.
- o Mickey noted that penalties could be more than monetary.
- o Perri referred to 31A-2-308(1)(b)(ii) that limits the fine per violation for companies to \$5,000. She wondered when this limit was set and if it needed to be updated.

VI. Old Business

- **Draft of Split Closing Bulletin** / Mickey

This should have been deleted from the agenda. There is already a Split Closing Bulletin.

- **Review Finalized Draft of R590-153, *Unfair Inducements...*** / Mickey & Perri

- o **Perri needed access to make to this rule** in order to make the necessary changes.
- o Canyon expressed concern with the national trend of not charging for services.
- o Garry asked if the rates being filed with the annual statements were being used or were they "a work in fiction?" Many felt they were not being used.
- o Canyon said that in the last couple of years title rates have increased 200% and escrow rates had increased 10-15%. David asked how closing costs compared with other states? David Moore said that in the western United States the combined premium and closing fee are within a 15% variance. Utah is in the middle. Escrow agents are not getting enough to pay their costs. Jeff suggested waiting until expected market changes had occurred before setting rates. Canyon was concerned about waiting too long. Al didn't think escrow rates were as low as they seemed because of all the other fees being charged. Canyon asked if other fees should cover escrow rates or if there should be one escrow charge?
- o Canyon asked that **"Escrow Fees" be put on the March agenda.** Will need a larger room. David suggested finalizing the changes to 153 first and Garry agreed. Perri asked if R590-153 should be renumbered to R592. Motion by Canyon to approve the updated draft next month.
- o Garry expressed concern about eliminating Subsection R590-153-5(R) regarding reimbursement for information packets. Do we want to provide this information for free, which is what will happen (R) is deleted? Costs need to be passed along. What kind of cost is there and should the costs be weighed? How should they be set in relation to RESPA? Garry sent a letter to a HUD representative to see if they would be concerned with the deletion of (R). He responded that HUD would be. Nothing should be handed out free. Gerri suggested they be careful not to conflict with 31A-23a-402. Sheila said that if the information packet is put back on the escrow rate sheet then the farm package needs to be re-inserted as well. **Canyon ask Perri to research this issue for the next meeting to see if there would be any conflicts with RESPA and 402.** Jeff noted that creating minimum rates could give larger companies an advantage if not careful because their costs are often lower. **Garry will propose wording for the rule to re-insert the information packet in the rule and Escrow Rate Sheet. He will email the language to the Commission prior to the next meeting.**
- o Garry was unclear about the meaning of, "any form of title evidence." It is in the definition of the rule. **Add to the next agenda.**
- o Rod said that exchange companies are not regulated. They can offer gifts and incentives without limit. He would like to see them limited to some extent so he can compete. He would like the ability to participate in trade shows, etc. See 5W. **Rod was asked to send a letter to Jilene detailing what he would like done.**

- **Draft Rule for Exemption from the 3 year Licensure/Experience Requirement / Mickey & Clayton**
 - o The two met Friday with Brian Coleman.
 - o Perri said 31A-23a-204(1)(c) states that the Commission "MAY write a rule" to "exempt an attorney with real estate experience from the experience requirements" in this section of the law.
 - o They are just starting on a draft. It will create a mechanism to speed the licensing process and list types of experience related to title that a person could check off on an application. It could also include a narrative section to explain why they feel they are qualified. The Commission would need to approve the licensee. The **wording of the rule will be sent to Commission members before the next meeting**. Currently agency owners are not required to be licensed. Clayton said the attorneys he works with take and pass the licensing exam, continue with self-study and align themselves with people who know the title business.

VII. **New Business**

- **"Transaction" Definition 31A-23A-406(1) / Canyon**
 "Transaction" needs to be defined. The department bulletin prohibits split closings if these requirements are not met. An Insured Closing Protection Letter would provide protection in a cash only escrow closing when there is no insurer. A written contract with a settlement and closing is a Transaction. It is almost impossible to separate the buyer and seller in an escrow transaction. The bulletin concerns him because it states that there are two separate transactions in an escrow. Rule R590-152 needs to be changed to redefine, "transaction," and allowing split closings.
 - o Al Newman did not see how the Closing Letter would protect the seller.
 - o Jeff asked if there would be a fee for the letter? Canyon thought perhaps \$50 or \$100.
 - o Rod said that if an agent does a cash sale on buyer's side for \$125 they are operating below their costs. If too low when it is a cash sale then the rate is too low for other sales. Al said that if split sales were done away with that problem would be solved.
 - o Doug Curlis said the letter would provide security and protect the public. He encouraged the Commission to adopt a closing letter.
 - o Dave said the two different types of splits closings, cash and courtesy, should be addressed. A closing protection letter should not be required in courtesy closing.
 - o Jerry said it was important to determine if an exchange company was being used in a transaction. If so, do we count it as a cash transaction? Yes.
 - o Canyon provided sample of a Closing Letter to a lender. Gary suggested sending the form to the industry but not mandating its use.
 - o Canyon made a **motion** to **come up with definition of transaction before the next meeting**. Jerry seconded it and the vote was unanimous.
- **Rule R592-5, "Dual Licensing," Proposed Revision / Mickey**
 This should be taken off the agenda.
- **Self-Promotional Items, R590-153-6E / Mickey**
 The department interprets the \$5 limit as the final cost of the item before handing it out. No one suggested a change.

VIII. **Other Business from Committee Members**

Nothing.

IX. **Adjourned:**

At 11:35am Jerry made a **motion** to adjourn, Canyon seconded it and the vote was unanimous. For February only the meeting will begin at 9:30am to allow Garry enough time to drive from the airport.

X. **Next Meeting** February 11, 2008, 9:30a.m.

2008 Meetings

Feb 11, Backman 9:30am	July 16, Beehive Rm
Mar 10, Beehive Rm	Aug 11, Beehive Rm
Apr 14, Beehive Rm	Sept 8, Beehive Rm
May 12, Beehive Rm	Oct 8, Beehive Rm
June 9, Beehive Rm	Nov 10, Beehive Rm
	Dec 8, Beehive Rm